
IN THE MATTER	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
OF	:	
	:	Docket No. C22-96
EDWARD MERCER	:	
<i>Brick Township Board of Education</i>	:	
<i>Ocean County</i>	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Matthew Santoro against Edward Mercer on July 23, 1996. Mr. Santoro alleges that Mr. Mercer violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24(c), when he negotiated for and accepted employment with Blue Cross/Blue Shield shortly after he voted in favor of changing health insurance carriers to Blue Cross/Blue Shield. Mr. Mercer was a member of the Brick Township Board of Education (Board) at the time the complained of vote was taken. By Answer filed September 24, 1996, Mr. Santoro admitted that he accepted employment with Blue Cross/Blue Shield three months after the July 13, 1995 vote, but denies that he was negotiating with Blue Cross/Blue Shield at the time of the vote.

By letter dated May 16, 1997, the School Ethics Commission (Commission) advised Mr. Santoro and Mr. Mercer that they could appear before the Commission at its May 27, 1997 meeting, if they so chose. Mr. Santoro did not appear and Mr. Mercer appeared on C33-96, a related, but different complaint filed against Mr. Mercer by the Board. In C33-96, the Board does not complain about the July 13 vote, but rather alleges that Mr. Mercer used his position to secure his position at Blue Cross/Blue Shield after the vote, in violation of the Act.

FACTS

In his complaint, Mr. Santoro alleges that Mr. Mercer was a member of the Board's Negotiation Committee which, in 1994-95, was charged with determining which health insurance carrier the district should use in the future. Mr. Santoro alleges that Mr. Mercer, as part of the Committee, interviewed representatives of Blue Cross/Blue Shield. He further alleges that Mr. Mercer and the Committee ultimately recommended Blue Cross/Blue Shield as the carrier and that the Board approved this recommendation with Mr. Mercer voting in favor of the company. This vote was taken by the Board on July 13, 1995. In October, Mr. Mercer accepted employment with Blue Cross/Blue Shield. Given the proximity of the July 13 vote and Mr. Mercer's acceptance of employment with Blue Cross/Blue Shield, Mr. Santoro concludes that Mr. Mercer was negotiating with Blue Cross/Blue Shield at the time he recommended Blue Cross/Blue Shield and at the time he voted on the approving Blue Cross/Blue Shield as the insurance carrier.

Mr. Mercer denies any wrongdoing. Mr. Mercer answers that while he was on the Board's Finance Committee, which met with Blue Cross/Blue Shield and CIGNA to determine which carrier to use, he did not meet privately with any representative of Blue Cross/Blue Shield. He based his vote on the Business Administrator's recommendation. Finally, he states that he did not speak to anyone at Blue Cross/Blue Shield about employment until after the July 13, 1995, vote was taken.

The Commission's investigation of this complaint, as well as related complaint C33-96, showed the following¹. Mr. Mercer was on the Board's Finance Committee for 1994-95 and the Finance Committee was charged with investigating health insurance carriers. Dr. Phillip Nicastro, Business Administrator, issued a memorandum to all Board members dated June 29, 1995, recommending that the Board change health insurance carriers from CIGNA to Blue Cross/Blue Shield because the change would result in significant savings to the district. On July 13, 1995, the Board voted to accept Dr. Nicastro's recommendation. Mr. Mercer made the motion to change companies and voted in favor of the motion. The motion carried. The change from CIGNA to Blue Cross/Blue Shield resulted in savings to the district. In September 1995, Mr. Mercer interviewed with Blue Cross/Blue Shield for a position with the company. Mr. Mercer accepted and began employment with Blue Cross/Blue Shield in October 1995.

ANALYSIS

Mr. Santoro alleges that Mr. Mercer violated N.J.S.A. 18A:12-24(c) when he voted to approve Blue Cross/Blue Shield as the insurance carrier for the district. Mr. Santoro assumes that because Mr. Mercer became employed by Blue Cross/Blue Shield three months after he voted to approve the company as the carrier, Mr. Mercer must have been negotiating for employment with Blue Cross/Blue Shield at the time he voted on July 13. N.J.S.A. 18A:12-24(c) prohibits a school board member from acting in any matter where he has a direct or indirect financial or personal involvement that could reasonably be expected to impair his objectivity or independence of judgement. There is no information to suggest that Mr. Mercer sought employment with Blue Cross/Blue Shield or in any way was negotiating for employment at the time of the July 13 vote. Indeed, Mr. Santoro bases the allegations in his complaint solely on his assumptions. As set forth in the Commission's decision on probable cause in C33-96, the Commission's investigation into that complaint did not reveal any information to suggest that Mr. Mercer was in contact with Blue Cross/Blue Shield prior to the July 13 vote. Accordingly, there is no probable cause to credit the allegations in the complaint.

¹ In C33-96, the Board alleges that Mr. Mercer used his position as Board member to secure employment with Blue Cross/Blue Shield. Specifically, the Board alleges that, after the vote, Mr. Mercer gave his resume to a Blue Cross/Blue Shield employee who was working at district offices in preparation for the Blue Cross/Blue Shield takeover. The allegations in C33-96 are broader than the allegations in this complaint as they are not limited solely to the July 13 vote. Accordingly, the undisputed facts involved in C33-96 are broader as well. It is not necessary to the decision in this matter to include the facts in the detail as they are set forth in the Commission's July 22, 1997, letter decision on probable cause in C33-96, however, the Commission incorporates them by reference.

DECISION

For the foregoing reasons, the Commission finds that there is no probable cause to credit the allegations that Mr. Mercer violated N.J.S.A. 18A:12-24(c) when he voted to approve Blue Cross/Blue Shield as the health insurance carrier for the district. Accordingly, the Commission dismisses the complaint. This action constitutes final agency action and is appealable to the Superior Court, Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C22-96

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission has found no probable cause to credit the allegations that respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismisses the charges against her; and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on July 22, 1997

Mary E. Torres
Acting Director

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